




## RAVALLI COUNTY ATTORNEY

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**TO:** Regina Plettenberg, Clerk and Recorder  
**CC:** Commissioners ✓  
**FROM:** Alex Beal, Deputy   
**DATE:** August 31, 2007

**RECEIVED**

**SEP 04 2007**

Ravalli County Commissioners

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**RE:** Recording Linkenhoker/Frost Document

You have asked for my opinion regarding whether you should accept and record a document from Chris Linkenhoker/Bob Frost purporting to be a "Citizen Petition." This is not a petition as that term is used by MCA § 7-5-132 (2005), as it was not approved for form by Ken Bell, Hamilton City Attorney. The letter that was included seems to acknowledge this. However, the language of the document entitled "Citizen Petition for the City of Hamilton, Montana" is troubling. It includes language stemming from MCA § 7-5-131 to -137 regarding citizen initiatives, and appears to claim to be such a petition, including a claim that the requirements of MCA § 13-27-302 were followed.

In our discussions, it has been clear that you understand and agree that this is not a valid petition for initiative as it has never been approved as to form. Without that step, any signatures obtained are legally irrelevant. If a similar petition is verified as to form, it will need to be resubmitted for signatures. As such, my advice to you is to refuse to record this document. Just as you would reject a document claiming to divide properties without subdivision review, I would advise you to reject this document because it cannot legally do what it claims to do. Additionally, I believe that the possibility for confusion is significant. While there is obviously an argument that there is no harm in recording, but not verifying this document, I fear that such subtlety will escape any number of people. I fear that many people will become confused and suspicious when they do not see this matter on the November ballot—after all it was filed with the Clerk and Recorder... While I agree that it will have no legal effect to file this document, I think that it will create a great deal of confusion and potentially anger for the electorate come November.

In the event that you disregard this advice, you may expose the county to suit seeking to have this document removed from the record. In that event, it is possible that attorney's fees and costs could be assessed against the county. If you choose to file this document, you must file a cover page with the document explaining that it is not an approved petition, and that your involvement with this matter is merely through your role as Clerk and Recorder, and not as Election Administrator. Additionally, I must insist that each page be stamped with the following language:

"This petition has not been approved as to form by the Hamilton City Attorney. This document has not been verified by the Ravalli County Elections Administrator. This document will not appear on any ballot."

We have discussed the *Rocky Mountain Timberlands v. Lund*, 265 Mont. 463 (1994) case, and I think it is very much on point. There, the Montana Supreme Court affirmed your predecessor's decision to reject land deeds because they were invalid. This is an invalid petition. You would not file an invalid land deed, even with language explaining it is invalid. By the very same reasoning, you should not file an invalid initiative petition, even with language explaining it is invalid. I know that you have struggled with this question as it is generally your duty to record all documents presented to you. However, I feel that this matter is clearly within the exception that Betty's case set out.